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DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D. C. 20549

FILE:

DATE: MAR 28 1977

MATTER NO. ~~164928~~

Trans Country Van Lines, Inc.

DIGEST:

1. Carrier tenders under section 22 of Interstate Commerce Act, 49 U.S.C. 22 (1970), are offers to furnish transportation services at special rates and conditions; they are subject to established principles of contract law, one of which is that acceptance of offer must comply exactly with conditions of offer. See court cases cited.
2. Where offer in Tender 1-W is conditioned to apply "only in absence of an applicable Tender", existence of applicable individual Tender 150 prevents acceptance of Tender 1-W.

Trans Country Van Lines, Inc. (Trans Country), in a letter dated June 25, 1976, requests review by the Comptroller General of the United States of a deduction action taken by the former Transportation and Claims Division (TCD) of the General Accounting Office, now a part of the General Services Administration. See the General Accounting Office Act of 1974, 88 Stat. 1959, approved January 2, 1975. A deduction action constitutes a settlement within the meaning of Section 201(3) of that Act, 49 U.S.C. 65(b) (Supp. V 1975), and of 4 C.F.R. 53.1(b)(1) and 53.2 (1976).

TCD's action was taken on a shipment of electronic instruments weighing 2,420 pounds which was transported in June 1972 from Palm Bay, Florida, to Syosset, New York, under Government bill of lading No. P-1643146. The bill of lading was annotated "EXPEDITED SERVICE REQUIRED."

Trans Country was paid \$637.50 for this transportation service prior to audit. See 49 U.S.C. 66 (1970). Its charges were based on the carrier's Section 22 Tender ICC No. 150 (Tender 150). This is an individual tender naming Trans Country and two other carriers as parties; it provides a rate of \$5.70 per 100 pounds for 1,175 miles and a 10,000-pound minimum weight per shipment. It also incorporates by reference the accessorial and other charges in Movers' and Warehousemen's Association of America, Inc., Government Rate Tender 1-W (Tender 1-W). In contrast to Tender 150, Tender 1-W is published by the Association on behalf of numerous member carriers, including Trans Country. Incorporated by reference into Tender 1-W are the

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rules and regulations in that Association's Tariff 44 that are not provided for in Tender 1-W. Based on these rate authorities, Trans Country included in its freight bill a shipment charge of \$17.50 and a surcharge of \$50. (The minimum weight restriction for expedited service is 5,000 pounds and is found in Rule 23 of Tariff 44).

Following an audit of the carrier's bill, TCD determined that lower charges of \$588.25 were applicable to the shipment and issued a Notice of Overcharge for \$49.25. The overcharge is based on a rate of \$11.55 per 100 pounds found in Section 6 of Tender 1-W and the minimum weight of 5,000 pounds for expedited service found in rule 23 of Tariff 44. The shipment charge is \$10.75 (item 15 of Tender 1-W) and the surcharge does not apply when a shipment is transported under the rates in Section 6 of Tender 1-W. (item 300, note 6, of Tender 1-W). When the overcharge was not refunded it was deducted from monies otherwise due the carrier. 49 U.S.C. 66 (1970).

TCD, now GSA, contends that Tender 150 does not apply as the basic rate authority on the shipment and relies on item 23 of that tender which reads in part: "This tender will not apply where charges accruing hereunder exceed charges otherwise applicable for the same service, : : ;"

Since the charges accruing under Tender 150 exceed those in Tender 1-W, GSA asserts that Tender 1-W is "otherwise applicable" and is controlling.

Trans Country contends that Tender 150 and not Tender 1-W is the basic rate authority for the shipment. It relies on this language which appears on the face of Tender 1-W: "This Tender will apply only in the absence of an applicable individual Tender as filed by the carriers listed herein."

GSA, however, contends that Tender 150 is not an "applicable individual Tender", as those words are used in the language relied on by Trans Country, because Tender 150 does not contain the lower charges. But in response Trans Country asserts that item 23 of Tender 150 refers to otherwise applicable lower charges in the carrier's published tariff (and not to lower charges in another tender). It points to paragraph (h) of Tender 1-W which reads: "Whenever the TOTAL charge of a shipment under carrier's published tariff is lower than the TOTAL charge for such shipment under the rates provided in this Tender the TOTAL charge developed by use of the carrier's published tariff will apply."

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Both Tender 150 and Tender 1-W contain rates and charges on domestic shipments of household goods; they were issued under Section 22 of the Interstate Commerce Act, as amended, 49 U.S.C. 22 (1970), made applicable to motor carriers by Section 217(b) of that Act, 49 U.S.C. 317(b). Among other things, Section 22 permits carriers subject to the Act to transport, store or handle property free or at reduced rates for the United States; it exempts from the rate regulations of the Act transportation services performed for the United States. See United States v. Georgia Public Service Commission, 371 U.S. 285 (1963).

A common carrier rate tender under Section 22 is an offer to furnish transportation services at special rates and charges and subject to the terms and conditions specified. C & H Transportation Co., Inc. v. United States, 436 F.2d 480, 481 (Ct. Cl. 1971); 45 Comp. Gen. 118, 121 (1965). As such, it is subject to interpretation according to established principles of contract law. 37 Comp. Gen. 753, 754 (1958). And it is an elementary principle of contract law that to give rise to a binding contract the acceptance of an offer must comply exactly with the requirements of the offer. Williston on Contracts, Third Edition Section 72 (1957); Humbia Oil & Refining Co. v. Westside Investment Corporation, 419 S.W.2d 448 (Ct. App. Texas 1967); cf. Steele v. Harrison, D.D.S., 552 P.2d 957, 962 (Kansas 1976).

A specified condition of the offer in Tender 1-W is that it applies to domestic shipments of household goods "only in the absence of an applicable individual Tender as filed" by Trans Country. Since Trans Country's Tender 150 is an "applicable individual Tender," the specific nonapplicability requirement in Tender 1-W has not been met. It seems clear then that on the shipment under consideration the offer in Tender 1-W has not been accepted.

GSA's contention that Tender 150 is not an "applicable individual Tender" because lower charges are found in Tender 1-W is immaterial where a choice of offers in Section 22 tenders or quotations is available on a given shipment; to apply to the shipment, the particular acceptance must comply exactly with the requirements of the particular offer.

Similarly, GSA's contention that item 23 of Tender 150 makes the rates in Tender 1-W available to the shipment is incorrect because Tender 1-W is not "otherwise applicable" to the shipment transported under GBL No. F-1643146.

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Trans Country's reliance on paragraph (b) of Tender 1-W is misplaced. Paragraph (b) merely recognizes the well established rule that by law Government officials are without authority to contract for rates higher than those available to the public under published and filed tariffs for like services under like conditions. Grayhound Corp. v. United States, 111 F. Supp. 259, 264 (Ct. Cl. 1953); United States v. Alabama & Vicksburg Ry., 40 I.C.C. 405 (1916); Section 217(b) of the Interstate Commerce Act, as amended, 49 U.S.C. 317(b) (1970).

In these circumstances, action should be taken by GSA consistent with this decision.

R.F.KELLER

Deputy Comptroller General
of the United States